back all the depositors a percentage of the refund of their deposits rather than to leave them in the lurch with nothing to hope for.

The said Regulations were designed, inter alia, to create such an equitable situation. If the auction of the lands went ahead at the behest of the plaintiff and some of the creditors, there being no other worthwhile asset for those so left in the lurch, Bank Negara Malaysia would obviously be frustrated in their duty and functions under the said Regulations, in other words, their rights against the defendant herein under the said Regulations would be directly affected by the order made on the summons for directions for sale in regard to the sale of the defendant's lands. Any contention to the contrary would, in my view, be otiose.

The Privy Council in *Pegang Mining Co Ltd*[1] confirmed the order of allowing the intervention through the instrumentality of O 16 r 11 of the repealed Rules of the Supreme Court. The said O 16 r 11 would appear to be in pari material with O 15 r 6 of our present Rules of the High Court 1980.

Bank Negara Malaysia therefore had good reasons to intervene and be heard, in other words also, it had the locus standi, the lack of which was complained of by the plaintiff.

The court next considered the question as to whether this court had jurisdiction to grant a stay of execution of the judgment obtained by the plaintiff in this case, and then decided that it had more than ample jurisdiction to do so for the following reasons.

At the hearing before me, a petition for winding up had already been presented against the defendant (judgment debtor) so that s 224 of the Companies Act 1965 came into operation and the order to stay granted was really declaratory of the effect of the said s 224 which provides as follows:

> Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the court shall be void.

The Companies Act 1965 is not the only statute that confers jurisdiction on the court to stay execution of a judgment; another statute that comes readily to mind is the Bankruptcy Act 1967 in regard to a judgment against a natural person. There are conceivably other statutes with similar provisions.

Apart from statutes, the Rules of the High Court also confer similar jurisdiction, thus eg the jurisdiction to grant a stay of execution pending appeal; under O 47 r 1, there is jurisdiction to grant a stay of execution of a money judgment when (a) there are special circumstances which render it inexpedient to enforce the judgment or (b) when the applicant is unable from any cause to pay money; under O 14 r 6(1)(b), on an O 14 application for summary judgment, where the court grants judgment to a plaintiff and it can also stay the execution of it pending trial of the defendant's counterclaim; and under O 45 r 11, the court grants a stay of execution on the ground of matters which have occurred since the date of judgment.

In granting the stay of execution in the instant case, the court bore in mind also the clear differences between granting a stay of execution and granting a stay of proceedings (excluding the proceeding of granting a stay of execution), the latter not being in question herein any discussion thereon for the time being will be superfluous.

Application allowed.

Solicitors: *Shook Lin & Bok*; *Nga Hock Cheh & Co.*

Reported by *Ng Sheau Jiuan*

Rajoo s/o Ramasamy v Inspector General of Police & Ors

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL APPLICATION NO CR54-10-88
ANUAR J
17 NOVEMBER 1988

Preventive Detention – Detention order issued by Minister under Dangerous Drugs (Special Prevention Measures) Act 1985 – Inquiry officer merely relied on investigating officer's report when submitting his own report to Minister – Failure on inquiry officer's part to make an 'inquiry' – Report submitted to Minister bad in law – Detention order thus null and void – Dangerous Drugs (Special Preventive Measures) Act 1985, s 5(2)

Words and Phrases – 'Shall inquire' – Dangerous Drugs (Special Preventive Measures) Act 1985, s 5(2)

The applicant was arrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). Subsequently, the Deputy Minister of Home Affairs ('the Minister') issued an order under s 6 of the Act directing that the applicant be detained for a period of two years. The applicant filed an application for an order that a writ of habeas corpus be issued to the respondents to have the applicant produced before the court, on the ground that the order issued by the Minister was bad in law and null and void.

Held, allowing the application:

(1) Upon the proper construction of s 5(2) of the Act, it is imperative that upon receipt of the report submitted by the police officer under s 3(3) of the Act, the inquiry officer shall inquire whether there are reasonable grounds for believing that the person detained is involved in trafficking in dangerous drugs. However, the inquiry officer did not do so. What the inquiry officer did was merely to read the report submitted to him by the investigating officer and based on that report he submitted a report to the Minister.

(2) Merely reading the investigating officer's report is not sufficient and it does not constitute 'inquiry'. The inquiry officer should either call witnesses or procure such other evidence or require the production of any document to enable him to put up a report to be submitted to the Minister.

(3) Failure on his part to inquire would render his report to the Minister bad in law. If the Minister acts on this report, then it follows that the order issued by the Minister would also be bad in law.

[*Editorial Note*: The respondents appealed to the Supreme Court vide Criminal Appeal No 51 of 1988. The Supreme Court (comprising Abdul Hamid LP, Hashim Yeop A Sani CJ (Malaya) and Ajaib Singh SCJ) allowed the appeal on 28 January 1989. The written judgment of the court will be reported in the next issue.]

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(1), (3), 5(2), (5), 6

Cik Zaleha Zahari (Senior Federal Counsel) for the respondents.

Darshan Singh Khaira for the applicant.

Cur Adv Vult

Anuar J: This is an application by the applicant for an order that a writ of habeas corpus be issued to the respondents to have the applicant produced before the court to undergo and receive all and singular matters and things as the court shall then and there consider concerning him on his behalf.

The applicant was arrested on 1 April 1988 at the Holiday Inn, Kuala Lumpur under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. On 13 May 1988 the Deputy Minister of Home Affairs issued an order under s 6 of the Dangerous Drugs (Special Preventive Measures) Act 1985 directing that the applicant be detained for a period of two years with effect from 13 May 1988.

I allowed the application only on one ground. I held that the detention of the applicant was illegal and therefore null and void as the Minister's order was issued without a proper report by the inquiry officer under s 5 of the Dangerous Drugs (Special Preventive Measures) Act 1985. From the facts as disclosed in the affidavit of the inquiry officer (encl 26), it is obvious to me that the report submitted by the inquiry officer to the Minister under s 5(5) of the Act is not a valid report. The report of the inquiry officer is bad in law as he failed to make inquiry as required under s 5(2) of the Act.

Section 5(2) of the Dangerous Drugs (Special Preventive Measures) Act 1985 reads:

> Upon receiving the report under subsection (3) of section 3, the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

Upon the proper construction of the section it is imperative that upon receipt of the report submitted by the police officer under s 3(3) of the Act the inquiry officer shall inquire into the case. However, the inquiry officer did not do so. This is what the inquiry officer stated in para 4 of his affidavit:

> 4 After careful consideration of the report of investigations submitted by the police, I was satisfied that there were reasonable grounds for believing that the applicant has been associated with activities relating to or involving trafficking in dangerous drugs. I then prepared a written report wherein I stated that based on the complete report of the investigations carried out by the police in respect of the applicant, I was satisfied that the applicant has been involved in activities relating to or involving trafficking in dangerous drugs etc.

From the affidavit it is clear that the inquiry officer did not properly inquire whether there are reasonable grounds for believing that the applicant has been or is associated with any activity relating to or involving trafficking in dangerous drugs. What the inquiry officer did was merely to read the report submitted to him by the investigating officer and based on that report he submitted a report to the Minister. In my view the inquiry officer failed to make an inquiry within the meaning of s 5(2) of the Act. I think merely reading the investigating officer's report is not sufficient and it does not constitute 'inquiry'. Under s 5(2) it is provided that upon receiving the report submitted by the investigating officer the inquiry officer 'shall inquire' whether there are reasonable grounds for believing that the person detained is involved in trafficking in dangerous drugs. It means to me that the inquiry officer should either call witnesses or procure such other evidence or require the production of any document to enable him to put up a report to be submitted to the Minister. Failure on his part to inquire would render his report to the Minister bad in law. If the Minister acts on this report then it follows that the order issued by the Minister would also be bad in law.

In the event I held that the order issued by the Minister dated 13 May 1988 is bad in law and null and void.

For the reasons above I would allow this application.

Application allowed.

Solicitors: *Darshan Singh & Co.*

Reported by *Ng Sheau Jiuan*